IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9354 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANDAN SYNTHETICS PVT LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9354 of 2002

MR AMAR P DAVE for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1

..... for Respondent No. 2-4

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 10/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by learned Senior Central Government Standing Counsel Shri D.N. Patel for the respondent authorities. At the request of the learned advocates, the petition is finally heard today.

The petitioner is a manufacturer of yarn, man made fibre and fabrics. The grievance which has been ventilated in this petition is with regard to non clearance of consignments imported by petitioner no.1 Company which have been referred to in the statement annexed to the petition as Annexure-B.

Learned advocate Shri Amar Dave appearing for the petitioners has submitted that petitioner no.1 company is an Export Oriented unit and, therefore, it has been exempted from paying certain duties on the consignments which are subject matter of this petition. In view of the exemption granted in favour of petitioner no.1 Company, no import duty is to be paid on the consignments which are subject matter of this petition and, therefore, the petitioner company should be permitted to clear the goods without payment of any import duty. Yet, the respondent authorities are not permitting the petitioners to clear the goods and the goods have been detained by the respondent authorities without any justifiable reason.

In pursuance of notice issued by this Court, learned Senior Central Government Standing Counsel Shri D.N. Patel, appearing for the respondent authorities, has submitted that the respondent authorities are having an apprehension that petitioner no.1 Company might dispose of the goods, which are subject matter of the petition, in local market, though it is not open to it to do so as it is an Export Oriented Unit and, therefore, the goods are required to be processed and exported or dealt with by petitioner no.1 Company as per the Exim Policy. It has been submitted by him that in the past, petitioner no.1 Company had made an effort to dispose of some of the goods in the local market in violation of the conditions imposed upon petitioner no.1 at the time when it was treated as Export Oriented Unit. According to the learned advocate, the respondent authorities are making necessary enquiry with regard to an earlier transaction and so as to see that such an attempt of petiitoner no.1 Company is not repeated, at present, the goods are not permitted to be lifted or cleared by petitioner no.1

Company.

We have heard the learned advocates. It is not in dispute that even with regard to the past incident referred to by the learned advocate appearing for the respondents, there is no finding to the effect that petitioner no.1. Company had made an effort or had in fact disposed of the goods in local market against the conditions imposed upon it. In the circumstances, in our opinion, it would not be just and proper on the part of the respondent authorities to detain the goods, especially when the respondent authorities are unable to show the provisions under which the goods have been detained.

In the course of the arguments, learned advocate Shri Amar Dave appearing for the petitioners has submitted that the petitioners do not have any intention to dispose of the goods in question in local market. It has been submitted by him that the petitioners are to process the said goods so that ultimately the final product can be exported or can be sold as per the Exim Policy. So as to show the bonafides, it has been also submitted by him that the petitioners would not mind if some reasonable conditions are imposed upon the petitioners so that interest of the respondent authorities can be safeguarded, though according to him there is no provision whereby the respondents can detain the goods in question.

Looking to the fact that there is no provision with regard to detaining the goods and as the petitioners are also willing to abide by reasonable conditions, we direct that upon fulfillment of the following conditions, the goods in question shall be released forthwith by the respondent authorities:

1. One of the Directors of petitioner no.1 Company shall give an undertaking to this Court to the effect that the goods in question shall not be disposed of in Domestic Tariff Area and the goods shall be used only for the purpose of manufacturing the products which are to be exported. Such an undertaking shall be filed with this Court within a period of one week from today and a copy thereof shall be submitted to respondent no.4.

2. The respondent authorities shall value each and every consignment and shall also determine the amount of duty payable in respect of each

consignment as if the said goods are not to be used by an Export Oriented Unit. The petitioners shall furnish bank guarantee to the tune of 25% of the amount of duty to the respondent authorities and upon furnishing such a bank guarantee, the goods covered under the guarantee shall be released by the respondent authorities. The guarantee shall come to an end as and when the goods are actually used in the manufacturing process and are exported or disposed of as per the Exim Policy.

3. One of the Directors of petitioner no.1 Company shall also give a bond for the remaining amount of duty i.e. the amount which is not covered by the Bank guarantee to the effect that the goods shall be used as per the Exim Policy.

4. As the petitioners do not have any objection if the respondent authorities want to have physical supervision over the goods, it would be open to the respondents to have physical supervision over the goods to see that the goods are used for export or as per the Exim Policy. The said supervision shall continue till the goods are exported or are transferred to another Export Oriented Unit as per the Exim policy

The conditions which have been referred to hereinabove have been imposed as the petitioners are ready and willing to show their bonafides. It would be open to the petitioners to raise all possible pleas for defending themselves if some proceedings are initiated against them in future and this order is passed without prejudice to any of the rights and contentions of the parties.

In view of the above directions, the petition stands disposed of as allowed to the above extent. Rule is made absolute with no order as to costs.

(A.R DAVE,J.)

(D.A. MEHTA,J.)

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